IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4185 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

R N PARMAR

Versus

G I D C

Appearance:

1. Special Civil Application No. 4185 of 1988

MR SHALIN MEHTA for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner seeks to challenge the penal

order dated 30.7.1988 reverting him from the post of Junior Officer to the post of Assistant on the grounds of violation of the Gujarat Industrial Development Corporation (Staff) Regulations, 1963 and the principles of natural justice.

2. The relevant facts in brief are that, after joining the respondent-Gujarat Industrial Development Corporation (GIDC) as a Junior Officer in the year 1973, the petitioner was promoted to the post of Senior Officer in 1979 and, pursuant to a chargesheet issued in April 1985, the penalty of dismissal was imposed. Upon the penalty of dismissal being challenged in Special Civil Application No.2868 of 1986 and pursuant to an interim direction therein to make an appeal to the Board, the penalty was reduced in appeal to that of reversion to the post of Junior Officer for five years. Thus, even as the petitioner was serving on the post of Junior Officer, pursuant to a chargesheet dated 28.1.1986 alleging that he had allotted excess land to the holder of a plot in Gandhidham Industrial Estate without obtaining necessary permission from the Regional Manager, an enquiry was held in which the Enquiry Officer returned a finding that the petitioner was not responsible for the acts alleged against him. However, the Disciplinary Authority, without affording any opportunity of being heard to the petitioner, disagreed with the finding of the Enquiry Officer and without supplying a copy of the enquiry report, imposed penalty of reversion to the post of Assistant by the impugned order dated 30.7.1988.

3. By filing an affidavit-in-reply, the respondent has resisted the petition on the grounds that the petitioner had an alternative remedy of preferring an appeal under Regulation 41 of the Gujarat Industrial Development Corporation (Staff) Regulations, 1963; that the departmental proceedings conducted against the petitioner were complying with the principles of natural justice and that the petitioner was already reverted to the post of Assistant. It must be noted at this stage that while admitting the petition on 18.8.1988, this Court has issued interim direction not to give effect to the impugned order of reversion and to allow the petitioner to function in his original post.

4. It is clear from the facts and rival contentions as above that the impugned order of punishment is made after differing from the report and findings of the Enquiry Officer without the petitioner being supplied a copy of the enquiry report and without affording an opportunity of being heard in that regard to the

petitioner. In respect of this area of service jurisprudence, law is now settled by the Supreme Court in the case of YOGINATH D. BAGDE v. STATE OF MAHARASHTRA [(1999) 7 SCC 739] wherein it is categorically observed as under:

" 31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority, forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

5. In view of the above clear pronouncement and the facts that the Disciplinary Authority neither issued a show cause notice to the petitioner nor supplied the report of the Enquiry Officer and that the petitioner was not heard even as regards the quantum of punishment, a proper opportunity to defend himself was not given to the petitioner. Accordingly, the findings recorded by the Disciplinary Authority as also the order of punishment based thereon are held to be declared to be illegal and hence quashed. Accordingly, the impugned order of punishment is set aside and the petition is allowed to that extent. Rule is made absolute accordingly with, in the facts and circumstances, no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)